

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

IN RE: GERBER PRODUCTS COMPANY
HEAVY METALS BABY FOOD
LITIGATION

Master File No. 1:21-cv-00269 (MSN/JFA)

This Document Relates to ALL Cases

**GERBER PRODUCTS COMPANY'S RESPONSE TO PLAINTIFFS' MOTION TO
MODIFY SCHEDULING ORDER**

Gerber Products Company (“Gerber”) submits this Response in order to address certain statements in Plaintiffs’ Memorandum in Support of Motion to Modify Scheduling Order (the “Motion”). ECF No. 201-1. While Plaintiffs correctly state that Gerber does not oppose their requested modifications to the deadlines sought in the Motion, Gerber was not provided with a draft of the Motion nor was Gerber aware that the Motion would mischaracterize Gerber’s discovery conduct as somehow dilatory. Gerber files this Response to address those mischaracterizations and to make clear that Gerber has met the Court’s substantial completion deadlines in this action under a very tight timeframe.

As an initial matter, Gerber has worked diligently to meet each of the Court’s substantial completion deadlines. Gerber has conducted a thorough investigation to identify documents potentially responsive to Plaintiffs’ Requests for Production. Dozens of contract attorneys and White & Case attorneys then worked thousands of hours over the last several months reviewing the documents that were collected to determine whether they were responsive to Plaintiffs’ Requests for Production. In addition, White & Case attorneys have conducted various quality control checks of the document review, and ultimately produced over 800,000 pages of material to Plaintiffs. *See* ECF No. 201-1, pp. 5-6. Gerber and its attorneys have expended significant resources to meet the Court’s substantial completion deadlines.

The Motion suggests, although never directly states, that Gerber did not meet the September 9, 2022 substantial completion deadline. That suggestion is based largely on an isolated incident where Gerber’s document vendor ultimately classified a set of documents collected from a cloud-based storage platform as custodial, instead of non-custodial. When Gerber’s counsel discovered this issue, they instructed the review team to halt the review of other custodians’ documents and to focus immediately on these new documents. Gerber expedited the

review and quality control of those documents and has promptly produced responsive, non-privileged documents. While the Motion notes that subsequent productions have also included some documents from the priority custodians, the majority of those documents are the result of Gerber's ongoing privilege review and quality control checks. Gerber has also produced thousands of documents and hundreds of thousands of pages of documents from non-priority custodians. *See* ECF No. 201-1, pp. 5-6.

The Motion also suggests, but again never directly states, that Gerber is moving too slowly in its privilege review. The privilege review in this case is a substantial work stream that involves a significant number of documents given that Plaintiffs' Requests for Production seek documents created after Plaintiffs commenced litigation. Gerber attempted to speed the review of potentially privileged documents, and the logging of privileged materials, by requesting Plaintiffs' agreement that documents dated after the commencement of litigation need not be logged, but Plaintiffs declined. Gerber expects to complete its privilege review by October 7, 2022, and will serve its privilege log within 21 days, in accordance with the ESI Protocol. ECF No. 123.

Additionally, Gerber will make another production on October 7, 2022 (meeting the Court's substantial completion deadline) and anticipates making a clean-up production by October 14, 2022, containing primarily documents that were received this week.

Finally, Gerber notes that none of these issues was apparently significant enough to warrant further motions to compel. Plaintiffs raise them only now in the Motion seeking additional time.

Dated: October 5, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2022, I caused a copy of the foregoing **GERBER PRODUCTS COMPANY'S RESPONSE TO PLAINTIFFS' MOTION TO MODIFY SCHEDULING ORDER** to be filed electronically with the Clerk of the Court via the Court's ECF system, which will send notification of such filing to all counsel of record.

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